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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,900	03/08/2004	Brian A. Russell	40000-000120	1656
20350	7590	09/07/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			STORMER, RUSSELL D	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/796,900	RUSSELL, BRIAN A.
	Examiner Russell D. Stormer	Art Unit 3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-27 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-27 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 08 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: ____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>5/7/04</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____

***Drawings***

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings as filed are obviously informal.

Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. **The requirement for corrected drawings will not be held in abeyance.**

***Specification***

2. The disclosure is objected to because of the following informalities: The continuity data on page 1 must be completed and updated.

Appropriate correction is required.

***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 2, 6-10, 12, 13, 21, 22, and 27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 7, 10, 12, 13, 13, 25, 1, 30, and 32, respectively, of U.S. Patent No. 6701985. Although the conflicting claims are not identical, they are not patentably distinct from each other because independent claims 1 and 21 are substantially broader than claims 1 and 30 of the '985 patent and it is obvious that Applicant is claiming the same invention.

The depending claims are substantially the same as their counterparts in the patent.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 12, 13, 21, 22, 23, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Hale.

Hale discloses a wheel assembly comprising a rim 6 with side edges 8, a plurality of spaced protrusions 12, a resilient member 9 over the protrusions, and an actuator 18, 19 which compresses the resilient member between the spaced protrusions.

With respect to claim 27, it is inherent that the steel actuator would have a greater hoop strength than the resilient rubber member.

7. Claims 1, 2, 3, 12, 14, 15, 16, 21, 22, 23, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Frommann.

As shown in figure 6, Frommann discloses a wheel assembly comprising a rim 28 having side flanges which retain and couple a resilient member 17 to the rim, protrusions in the form of the heads of the rivets 26, and an actuator 2 to compress the resilient member around the protrusions.

With respect to claim 15, the spaced protrusions would be separately adjustable depending on the style of rivet used and how much the head of the rivet was deformed.

With respect to claim 16, the side flanges (unlabelled) of the rim 28 form the coupling devices.

With respect to claim 27, the steel actuator 2 would inherently have a greater hoop strength than the resilient rubber member.

#### ***Allowable Subject Matter***

8. Claims 4, 5, 11, 17-20, 24, 25, and 26 would be allowable if rewritten to overcome the nonstatutory double patenting rejections set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

**Conclusion**

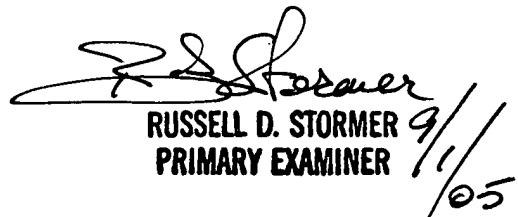
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references show other wheel assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (571) 272-6687. The examiner can normally be reached on Monday through Friday, 9 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

9/1/05

  
RUSSELL D. STORMER 9/1/05  
PRIMARY EXAMINER